

LD9111695

SENATE BILL NO. 471

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 13, 1994)

(Patron Prior to Substitute—Senator Lucas)

A BILL to amend and reenact §§ 18.2-67.9 and 63.1-248.13:1 of the Code of Virginia, relating to testimony using closed-circuit television.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-67.9 and 63.1-248.13:1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-67.9. Testimony by child using two-way closed-circuit television.

A. In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child the age of twelve or under relating to a violation of the laws pertaining to kidnapping (§ 18.2-47 et seq.), criminal sexual assault (§ 18.2-61 et seq.) or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, the attorney for the Commonwealth or the defendant may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The party seeking such order shall apply for the order at least seven days before the trial date or at least seven days before such other preliminary proceeding to which the order is to apply.

B. The court may order that the testimony of the child be taken by closed circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons *If the court finds:*

1. The child's child is persistent in his refusal to testify despite judicial requests to do so;

2. The child's substantial inability child is substantially unable to communicate about the offense; or

3. ~~The~~ There is substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying- ; *the court shall conclude that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge and the public, and shall order that the testimony of the child be taken by closed circuit television as provided in subsection A, unless it also finds that the necessary equipment is not or cannot be made available within a reasonable time, including the period of such continuance, if any, as may be necessary.*

Any ruling on the child's unavailability and the unavailability of the closed circuit television equipment under this subsection shall be supported by the court with findings on the record or with written findings in a court not of record.

C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for the Commonwealth and the defendant's attorney shall be present in the room with the child, and the child shall be subject to direct and cross-examination. The only other persons allowed to be present in the room with the child during his testimony shall be those persons necessary to operate the closed-circuit equipment, and any other person whose presence is determined by the court to be necessary to the welfare and well-being of the child.

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

E. Notwithstanding any other provision of law, none of the cost of the two-way closed-circuit television shall be assessed against the defendant.

§ 63.1-248.13:1. Testimony by child using two-way closed-circuit television.

A. In any civil proceeding involving alleged abuse or neglect of a child the age of twelve or under pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, the child's attorney or guardian ad litem or, if the child has been committed to the custody of the Department of Social Services, the attorney for the local Department of Social Services may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The person seeking such order shall apply for the order at least seven days before the trial date.

B. The court may order that the testimony of the child be taken by closed circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons *If the court finds:*

1. The child's child is persistent in his refusal to testify despite judicial requests to do so;

2. The child's substantial inability child is substantially unable to communicate about the offense; or

3. ~~The~~ There is substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying- ; *the court shall conclude that the child is unavailable to*

60 *testify in open court in the presence of the defendant, the jury, the judge and the public, and shall order*
61 *that the testimony of the child be taken by closed circuit television as provided in subsection A, unless it*
62 *also finds that the necessary equipment is not or cannot be made available within a reasonable time,*
63 *including the period of such continuance, if any, as may be necessary.*

64 Any ruling on the child's unavailability *and the unavailability of the closed circuit television*
65 *equipment* under this subsection shall be supported by the court with findings on the record or with
66 written findings in a court not of record.

67 C. In any proceeding in which closed-circuit television is used to receive testimony, the attorney for
68 the child and the defendant's attorney and, if the child has been committed to the custody of the
69 Department of Social Services, the attorney for the local Department of Social Services shall be present
70 in the room with the child, and the child shall be subject to direct and cross-examination. The only other
71 persons allowed to be present in the room with the child during his testimony shall be the guardian ad
72 litem, those persons necessary to operate the closed-circuit equipment, and any other person whose
73 presence is determined by the court to be necessary to the welfare and well-being of the child.

74 D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the
75 defendant, jury, judge and public to view. The defendant shall be provided with a means of private,
76 contemporaneous communication with his attorney during the testimony.